



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

DEC 15 2011

201210045

Uniform Issue List: 401.06-02

T:EP: RA:T2

LEGEND:

Taxpayer A: ***

Decedent B: ***

Individual C: ***

Individual D: ***

Trust T: ***

IRA X: ***

Company Y: ***

Date 1: ***

Date 2: ***

Date 3: ***

State S: ***

Dear ***:

This letter is in response to your request dated August 26, 2010, as amended by letters dated October 19, 2011 and November 8, 2011, submitted on your behalf by your authorized representative, in which you request a ruling under section 401(a)(9) and section 408 of the Internal Revenue Code ("Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested.

Decedent B was a resident of State S and established Trust T on Date 1. On Date 2, Decedent B died at age 74 and was survived by his spouse, Taxpayer A, and his two children, Individuals C and D. At the time of his death, Decedent B owned IRA X, an individual retirement account within the meaning of Code section 408(a), with Company Y.

Decedent B's beneficiary designation form, received by Company Y on Date 3, designated Trust T as the beneficiary of IRA X. Article V of Trust T provides that upon the death of Decedent B, Taxpayer A shall receive one-third of Decedent B's interest in all assets of Trust T, with the remaining two-thirds divided equally among each of Decedent B's living children. Individuals C and D were Decedent B's only living children on his date of death.

Taxpayer A represents that Trust T is valid under the laws of State S, and that a copy of Trust T was delivered to Company Y by October 31 of the calendar year following the year Decedent B died. Trust T became irrevocable upon Decedent B's death.

Based on the above, you, through your authorized representative, request the following rulings:

1. That IRA X may be divided by means of trustee-to-trustee transfers into an IRA for Taxpayer A, in her own name, and IRAs for Individuals C and D, in the name of Decedent B for the benefit of Trust T, without resulting in taxable distributions or payments under Code section 408(d)(1).
2. That the minimum distribution requirements under Code section 401(a)(9) may be met by (a) for the IRA in Taxpayer A's name, applying the Uniform Life Table found in section 1.401(a)(9)-9, Q&A-2, of the Income Tax Regulations ("Regulations"), and (b) for the IRAs set up to benefit Individuals C and D (in the name of Decedent B for the benefit of Trust T), applying the Single Life Table found in section 1.401(a)(9)-9, Q&A-1 of the Regulations, using the life expectancy of Taxpayer A.

With respect to your first ruling request, Code section 408(d)(1) provides generally that, in accordance with the rules of Code section 72, amounts paid or distributed from an IRA are included in gross income by the payee or distributee.

Code section 408(d)(3)(A) provides that paragraph (d)(1) of this section does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if -

(i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or

(ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3) of the Code).

Code section 408(d)(3)(C) provides, generally, that amounts from an "inherited" IRA cannot be rolled over into another IRA. In general, an "inherited" IRA is an IRA maintained by an individual who acquired said IRA by reason of the death of another if the acquiring individual is not the surviving spouse of said other individual.

On April 17, 2002, Final Regulations were published in the Federal Register with respect to Code sections 401(a)(9) and 408(a)(6) (see also 2002-19 I.R.B. 852, May 13, 2002). Section 1.408-8 of the Regulations, Q&A-5, provides that a surviving spouse of an IRA owner may elect to treat the spouse's entire interest as a beneficiary in an individual's IRA as the spouse's own IRA. In order to make this election, the spouse must be the sole beneficiary of the IRA and have an unlimited right to withdraw amounts from the IRA. If a trust is named as beneficiary of the IRA, this requirement is not satisfied even if the spouse is the sole beneficiary of the trust.

However, the Preamble to the Regulations under Code section 401(a)(9) and 408(a)(6) provides, in relevant part, that a surviving spouse who actually receives a distribution from an IRA is permitted to roll that distribution over to his/her own IRA even if the surviving spouse is not the sole beneficiary of the deceased's IRA, as long as the rollover is accomplished within the requisite 60-day period. A rollover may be accomplished even if IRA assets pass through either a trust or an estate.

Revenue Ruling 78-406, 1978-2 C.B. 157, ("Rev. Rul. 78-406") provides that the direct transfer of funds from one IRA trustee to another IRA trustee, even if at the behest of the IRA holder, does not constitute a payment or distribution to a participant, payee or distributee as those terms are used in Code section 408(d). Furthermore, such a transfer does not constitute a rollover distribution. Rev. Rul. 78-406 is applicable if the trustee-to-trustee transfer is directed by the beneficiary of an IRA after the death of the IRA owner as long as the transferee IRA is set up and maintained in the name of the deceased IRA owner for the benefit of the beneficiary.

With respect to your first ruling request, we note that Taxpayer A has the right to receive a distribution of her portion of IRA X. Thus, we believe it is appropriate to

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treat Taxpayer A as the "payee" or "distributee" of her portion of IRA X for purposes of Code section 408(d) even though IRA X must originally pass through Trust T. As such, she is eligible to roll over or transfer, by means of a trustee-to-trustee transfer, her portion of IRA X into an IRA established in her name.

With regard to Taxpayers C and D, under the terms of Trust T, they are the beneficiaries of the remaining shares of IRA X. Code section 408(d)(3)(C) provides that amounts from "inherited" IRAs—i.e., IRAs acquired by reason of death by persons other than the surviving spouse of the decedent—may not be rolled over to another IRA, and therefore constitute taxable distributions. However, as noted above, a trustee-to-trustee transfer described in Rev. Rul. 78-406 does not constitute a payment or distribution. Such a transfer may be accomplished after the death of the IRA holder on behalf of the beneficiaries of a decedent's IRA. The IRAs must be maintained in the name of Decedent B (deceased) for the benefit of Individual C (or Individual D, as applicable) as beneficiary of Trust T.

Therefore, with respect to your first ruling request, we conclude:

1. That IRA X may be divided by means of trustee-to-trustee transfers into an IRA for Taxpayer A, in her own name, and IRAs for Individuals C and D, in the name of Decedent B for the benefit of Trust T, without resulting in taxable distributions or payments under Code section 408(d)(1).

With respect to your second ruling request, Code section 408(a) provides the rules governing IRAs. Code section 408(a)(6) provides that, under regulations prescribed by the Secretary, rules similar to the rules of section 401(a)(9) and the incidental death benefit requirements of section 401(a) shall apply to the distribution of the entire interest of an individual for whose benefit the trust is maintained.

Code section 401(a)(9)(A) provides, in general, that a trust will not be considered qualified unless the plan provides that the entire interest of each employee/IRA holder —

(i) will be distributed to such employee not later than the required beginning date, or

(ii) will be distributed, beginning not later than the required beginning date, over the life of such employee or over the lives of such employee and a designated beneficiary or over a period not extending beyond the life expectancy of such employee or the life expectancy of such employee and a designated beneficiary.

Code section 401(a)(9)(B)(i) provides, in general, that if an employee/IRA holder dies after distribution of his interest has begun in accordance with section 401(a)(9)(A)(ii) (after his required beginning date), the remaining portion of his interest must be distributed at least as rapidly as under the method of distribution being used as of the date of his death.

Code section 401(a)(9)(C) provides, in relevant part, that, for purposes of section 401(a)(9), the term "required beginning date" means April 1 of the calendar year following the calendar year in which the employee attains age 70 1/2.

Code section 401(a)(9)(E) provides that for purposes of section 401, the term "designated beneficiary" means any individual designated as a beneficiary by the employee.

Section 1.401(a)(9)-4 of the Regulations, Q&A-1, provides, in relevant part, that a designated beneficiary is an individual who is designated as a beneficiary under the plan. An individual may be designated as a beneficiary under the plan either by the terms of the plan or, if the plan so provides, by an affirmative election by the employee (or the employee's surviving spouse) specifying the beneficiary. Under these Regulations, a designated beneficiary need not be specified by name in the plan in order to be a designated beneficiary so long as the individual who is to be the beneficiary is identifiable under the plan. The member of a class of beneficiaries capable of contraction or expansion will be treated as being identifiable if it is possible to identify the class member with the shortest life expectancy. Further, the passing of an employee's interest to an individual under a will or otherwise under applicable state law will not make that individual a designated beneficiary under section 401(a)(9)(E) unless that individual is designated as a beneficiary under the plan.

Section 1.401(a)(9)-4 of the Regulations, Q&A-3, provides that only individuals may be designated beneficiaries for purposes of section 401(a)(9). A person who is not an individual, such as the employee's estate or a charitable organization, may not be a designated beneficiary. If a person other than an individual is designated as a beneficiary of an employee's benefit, the employee will be treated as having no beneficiary for purposes of section 401(a)(9), even if there are also individuals designated as beneficiaries.

Section 1.401(a)(9)-4 of the Regulations, Q&A-4, provides in relevant part, that in order to be a designated beneficiary, an individual must be a beneficiary as of the date of the employee's death. Generally, an employee's designated beneficiary will be determined based on the beneficiaries designated as of the date of death who remain beneficiaries as of September 30 of the calendar year following the calendar year of the date of death.

Section 1.401(a)(9)-4 of the Regulations, Q&A-5, provides that where a trust is named as a beneficiary of an employee, beneficiaries of the trust with respect to the trust's interest in the employee's benefit may be treated as designated beneficiaries if the following requirements are met:

- (1) the trust is valid under state law, or would be but for the fact there is no corpus.
- (2) the trust is irrevocable or will, by its terms, become irrevocable upon the

death of the employee.

(3) the beneficiaries of the trust who are beneficiaries with respect to the trust's interest in the employee's benefit are identifiable within the meaning of A-1 of this section from the trust instrument.

(4) relevant documentation has been timely provided to the plan administrator.

Section 1.401(a)(9)-4, Q & A-6(b) of the Regulations provides, in relevant summary, that at a minimum, documentation sufficient to enable an IRA custodian to identify beneficiaries of an IRA must be provided by a trustee to the custodian by October 31 of the calendar year immediately following the calendar year in which the IRA owner died.

Section 1.401(a)(9)-4 of the Regulations, Q&A-5(c), provides that if the trust has more than one beneficiary, the rules under section 1.401(a)(9)-5, Q&A-7, determine which beneficiary's life expectancy shall be used to determine the distribution period.

Section 1.401(a)(9)-5 of the Regulations, Q&A-7(a), states that if more than one individual is a designated beneficiary, the beneficiary with the shortest life expectancy will be the designated beneficiary for purposes of determining the applicable distribution period.

Section 1.401(a)(9)-9 of the Regulations, Q&A-1, sets forth the "Single Life Table," to be used to determine the life expectancy of an individual.

Section 1.401(a)(9)-9 of the Regulations, Q&A-2, sets forth the "Uniform Lifetime Table," to be used to determine the distribution period for lifetime distributions to an employee or IRA holder in situations in which the employee/ IRA holder's spouse is either not the sole designated beneficiary or is the sole designated beneficiary but is not more than 10 years younger than the employee/ IRA holder.

With respect to your second ruling request, Taxpayer A, as discussed above, may roll her interest in IRA X into an IRA in her own name. Therefore, her minimum required distributions should be calculated using the Uniform Lifetime Table found in section 1.401(a)(9)-9, Q&A-2, of the Regulations.

With regard to the IRAs set up to benefit Individuals C and D, you have represented that Trust T is valid under the laws of State S, that it became irrevocable upon the death of Decedent B, and that a copy of Trust T was timely given to the IRA custodian, Company Y. Furthermore, the identity of each person entitled to receive any portion of IRA X upon Decedent B's death—Taxpayer A and Individuals C and D—is determinable under the provisions of Trust T. Therefore, Trust T meets the requirements of section 1.401(a)(9)-4, Q&A-5, of the Regulations for a "see-through trust," and the beneficiaries of Trust T may be treated as designated beneficiaries of IRA X.

Section 1.401(a)(9)-5 of the Regulations, Q&A-7(a) provides that the minimum required distributions are paid out over the life expectancy of the oldest designated beneficiary. Taxpayer A is older than Individuals C and D; thus, in the case of the IRAs maintained for Individuals C and D (in the name of Decedent B for the benefit of Trust T), the required minimum distributions should be calculated using the Single Life Table found in section 1.401(a)(9)-9, Q&A-1, of the Regulations, over the life expectancy of Taxpayer A.

Therefore, with respect to your second ruling request, we conclude:

2. That the minimum distribution requirements under Code section 401(a)(9) may be met by (a) for the IRA in Taxpayer A's name, applying the Uniform Life Table found in section 1.401(a)(9)-9, Q&A-2, of the Regulations, and (b) for the IRAs set up to benefit Individuals C and D (in the name of Decedent B for the benefit of Trust T), applying the Single Life Table found in section 1.401(a)(9)-9, Q&A-1, of the Regulations, using the life expectancy of Taxpayer A.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto. This ruling letter is based on the assumption that IRA X and the IRAs to be established met or will meet the requirements of Code section 408(a) at all relevant times. Furthermore, this ruling letter assumes that Trust T is valid under the laws of State S as represented.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file with this office, a copy of this letter ruling is being sent to your authorized representative. If you wish to inquire about this ruling, please contact ***. Please address all correspondence to SE:T:EP:RA:T2.

Sincerely yours,


Donzell Littlejohn, Manager,
Employee Plans Technical Group 2

(Jason Levine,
Acting for Donnie
Littlejohn)

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose

cc.
